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REMARKS

Applicants appreciate the Office Action of June 7, 2005. Applicants have amended the specification to include a "Related Applications" section as set out above. Applicants have also amended the pending claims to correct typographical errors therein and remove multiple dependencies therefrom. Applicants have added new Claims 12-13, 14-15, 16-17, 18-19 and 20 which correspond to Claims 4, 5, 6, 7 and 11, however, the new claims do not include multiple dependencies. Applicants respectfully submit that the pending claims are in condition for allowance, which is respectfully requested in due course, for at least the reasons discussed herein.

The Oath/Declaration

The Office Action states that the declaration filed with the present application is defective because the date given for the foreign application number is incorrect. See Office Action, page 2. Applicants are in the process of obtaining a new declaration from the inventors and will forward the newly executed declaration to the patent office in due course.

The Section 102 Rejections

Claim 9 stands rejected under 35 U.S.C. § 102(a) as being anticipated by Applicants Admitted Prior Art (hereinafter "AAPA"). See Office Action, page 2. Applicants respectfully submit that many of the recitations of Claim 9 are neither disclosed nor suggest by the AAPA. For example, Claim 9 recites:

A software distribution system for remote distribution/installation of computer programs from a source data processing system to at least one target data processing system based on at least two distribution/installation modes, wherein the computer programs are transferred as packages which are identified in a package list, the system comprising a queue manager which includes a request queue and an active queue for handling the remote distribution.

Applicants respectfully submit that at least the highlighted recitations of Claim 9 are neither disclosed nor suggested by the AAPA for at least the reasons discussed herein.

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The Background of the Invention discusses "two concepts for bringing software from a software repository to a particular target computer system," namely push-mode and pull-mode. See Specification, page 2, lines 10-12. Applicants do not dispute that the push-mode and the pull-mode are known. However, Claim 9 recites a software distribution system for remote distribution/installation of computer programs from a source data processing system to at least one target data processing system based on at least two distribution/installation modes. Nothing in the Background of the Invention (AAPA) discloses or suggests the use of both the push-mode and the pull-mode (or at least 2 distribution/installation modes) in the same software distribution system as recited in Claim 9. The Background of the Invention discusses the use of the push-mode or the pull-mode for software distribution, not both or at least two modes as recited in Claim 9.

Furthermore, Claim 9 further recites "the system comprising a queue manager which includes a request queue and an active queue for handling the remote distribution." Nothing in the Background of the Invention (AAPA) discloses or suggests a queue manager including a request queue and an active queue as recited in Claim 9. In fact, the only mention of queues in the Background of the Invention are references to an outbound and an inbound package queue. In particular, the Background of the Invention states:

A method and system for the distribution of software and data in a digital computer network is disclosed in U.S. Patent No. 5,845,090. The software and data are combined into single entities referred to as packages. Software packages are stored in a central package archive and a transfer program accesses the central package archive to schedule transfers of one or more software packages. The transfer program enables a user to specify, besides other attributes, the date and time for the transmission and the installation of the packages. **Once a software package is scheduled for transmission to a target computer, an indication is stored in an outbound package queue.** A package transfer agent program acts on this indication and transfers the package from the central package archive to the target system. **A corresponding package transfer agent on the target system places packages in an inbound package queue.** Finally a transfer daemon determines the package type and acts accordingly. If the package type is Distribution, then it messages the package to start installation.

See Background of the Invention, page 1, line 12 to page 2, line 7. The cited portion of the Background of the Invention discusses an outbound package queue, which stores an indication that the software package is scheduled for transmission and an inbound package queue that stores

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the packages received. Accordingly, nothing in the Background of the Invention discloses or suggests a "queue manager" as recited in Claim 9.

Accordingly, Applicants respectfully submit that Claim 9 is patentable over the AAPA for at least the reasons discussed herein. Furthermore, Applicants submit that the dependent claims are patentable at least per the patentability of the independent base claims from which they depend.

The Section 103 Rejections

A. Claims 1 and 8 stand rejected under 35 U.S.C. § 103 (a) as being unpatentable over the AAPA in view of United States Patent Publication No. 2002/0100036 to Moshir et al. (hereinafter "Moshir"). Applicants respectfully submit that many of the recitations of these claims are neither disclosed nor suggested by the cited combination. For example, Claim 1 recites:

A method for remote distribution/installation of computer programs from a source data processing system to at least one target data processing system **based on at least two distribution/installation modes**, comprising:

checking if the at least one target data processing system is available;
performing distribution/installation according to one of the at least two distribution/installation modes, if the at least one target data processing system is available;
monitoring if the distribution/installation is successful; and
switching the distribution/installation mode if the distribution/installation is not successful.

Claim 8 contains similar recitations to the highlighted recitations and Claims 6 and 7 are a data processing program and a computer program product, respectively, corresponding to the method of Claim 1. Applicants submit that at least the highlighted recitations of Claim 1 are neither disclosed nor suggested by the cited combination for at least the reasons discussed herein.

The Office Action states that the AAPA teaches all the recitations of Claim 1 except for "switching the distribution/installation mode if the distribution/installation is not successful." See Office Action, pages 3 and 4. As discussed above with respect to Claim 9, nothing in the AAPA discloses or suggests distribution/installation of computer programs from a source data

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processing system to at least one target data processing system based on at least two distribution/installation modes. Again, the Background of the invention discusses a conventional push-mode or a conventional pull-mode for distributing programs, not a combination of at least two modes as recited in Claim 1.

Furthermore, nothing in the Background of the invention discusses checking if the at least one target data processing system is available or performing distribution/installation according to one of the at least two distribution/installation modes, if the at least one target data processing system is available as further recited in Claim 1. If the Examiner maintains that these recitations are discussed in the Background of the Invention, Applicants respectfully request that the Examiner point to the specific teachings therein.

The Office Action admits that the AAPA fails to "teach switching modes of distribution/installation if one mode is not successful." *See* Office Action, page 4. Applicants note that the Background of the Invention has no reason to discuss "switching modes" because the Background discusses methods having distinct modes, not methods having at least two modes as recited in Claim 1. The Office Action points to page 5, paragraph 61 of Moshir as providing the missing teachings. *See* Office Action, page 4. Applicants respectfully submit that the cited portion of Moshir does not provide the missing teachings.

The cited portion of Moshir discusses different attempts to "download" the software update. *See* Moshir, page 5, paragraph 61. In contrast, Claim 1 recites switching the distribution/installation "mode," not multiple attempts using the same mode. For example, according to some embodiments of the present invention, if the push-mode (first mode) of distribution/installation is not successful, distribution/installation using the pull-mode (second mode) may be attempted (switched from push-mode to pull-mode). Nothing in Moshir discloses or suggests switching the distribution/installation "mode" as recited in Claim 1. Accordingly, Moshir does not provide the missing teachings for at least the reasons discussed herein.

As discussed above, none of the cited references, either alone or in combination, disclose or suggest many of the recitations of Claim 1. Accordingly, Claims 1 and 8 are patentable over the cited references for at least the reasons discussed herein. The dependent claims are patentable at least per the patentability of the independent base claims from which they depend.

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Furthermore, there is no motivation to combine the cited references as suggested in the Office Action. As affirmed by the Court of Appeals for the Federal Circuit in *In re Sang-su Lee*, a factual question of motivation is material to patentability, and cannot be resolved on subjective belief and unknown authority. See *In re Sang-su Lee*, 277 F.3d 1338 (Fed. Cir. 2002). It is improper, in determining whether a person of ordinary skill would have been led to this combination of references, simply to "[use] that which the inventor taught against its teacher." *W.L. Gore v. Garlock, Inc.*, 721 F.2d 1540, 1553, 220 U.S.P.Q. 303, 312-13 (Fed. Cir. 1983).

The Office Action states:

...it would have been obvious to one of ordinary skill in the art at the time the of the claimed invention to modify the teachings of the AAPA in order to switch modes of distribution/installation if one mode is not successful. This would have increased the chances for successfully distributing/installing computer programs from a source processing system to at least one target processing system in a timely fashion, (Moshir, page 5, paragraph 61, and page 1, paragraph 12).

See Office Action, page 4. This motivation is a motivation based on "subjective belief and unknown authority", the type of motivation that was rejected by the Federal Circuit in *In re Sang-su Lee*. In other words, the Office Action does not point to any specific portion of the cited references that would motivate one of skill in the art to combine the cited references as suggested in the Office Action. If the motivation provided in the Office Action is adequate to sustain the Office's burden of motivation, then anything that "would have increased the chances for successfully distributing/installing computer programs from a source processing system to at least one target processing system in a timely fashion" would render a combination obvious. This cannot be the case. Accordingly, the statement in the Office Action with respect to motivation does not adequately address the issue of motivation to combine as stated in *In re Sang-su Lee*. Thus, it appears that the Office Action gains its alleged impetus or suggestion to combine the cited references by hindsight reasoning informed by Applicants' disclosure, which, as noted above, is an inappropriate basis for combining references. Furthermore, even if the AAPA and Moshir could be properly combined, the combination of the AAPA and Moshir

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would not teach the recitations of the claims of the present application for at least the reasons discussed above.

Accordingly, Applicants respectfully submit that independent Claims 1 and 8 are patentable over the cited combination for at least these additional reasons. Furthermore, the dependent claims are patentable at least per the patentability of independent base claims from which they depend.

B. Claims 2-4 and 6-7 stand rejected under 35 U.S.C. § 103 (a) as being unpatentable over the AAPA and Moshir in view of United States Patent No. 6,289,511 to Hubinette (hereinafter "Hubinette"). As discussed above, Applicants submit that the dependent claims are patentable at least per the patentability of the independent base claims from which they depend. However, many of the dependent claims are also separately patentable.

For example, Claim 2 recites:

The method according to claim 1 wherein the computer programs are transferred as packages which are identified in a package list, the method further comprising:
pre-specifying attempt numbers for retrying a push-mode distribution and a pull-mode distribution;
retrieving a next package identified in the package list;
checking if the at least one target data processing system is available;
if the at least one target data processing system is available then starting installation of the package on the target data processing system;
otherwise, if at least one push-mode attempt is left, resuming and rescheduling a next push-mode distribution and, if no push-mode attempt is left, but at least one pull-mode attempt is left, resuming and rescheduling a next pull-mode distribution.

Applicants submit that many of the recitations of dependent Claim 2 are neither disclosed nor suggested by the cited combination for at least the reasons discussed herein.

The Office Action merely states that the combination of the AAPA and Moshir "show substantial features of the claimed invention" (Office Action, page 4), and does not provide any support for this statement. Applicants respectfully submit that many of the recitations of dependent Claim 2 are neither disclosed nor suggested by the cited references. If the Examiner maintains this rejection, Applicants respectfully request that the Examiner point out where in the

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AAPA and/or in Moshir the claim recitations are taught. Thus, Applicants submit that dependent Claim 2 is separately patentable over the cited combination for at least these additional reasons.

Furthermore, the Office Action admits that the AAPA and/or Moshir "fail to expressly disclose: prespecifying attempt numbers for retrying a mode of distribution, or rescheduling a mode of distribution." *See* Office Action, page 4. However, the Office Action points to column 8, lines 4-10 of Hubinette as providing the missing teachings. *See* Office Action, page 5.

Applicants respectfully submit that Hubinette does not provide the missing teachings. The cited portion of Hubinette discusses retransmission of files and having a predetermined number of attempts. Applicants do not claim that either of these general concepts are new. However, dependent Claim 2 recites "pre-specifying attempt numbers for retrying a push-mode distribution and a pull-mode distribution" and "if at least one push-mode attempt is left, resuming and rescheduling a next push-mode distribution." Nothing in the cited portion of Hubinette discloses or suggests the specific recitations of dependent Claim 2. Furthermore, Hubinette also does not provide the remaining teachings of dependent Claim 2, which fail to be taught by the AAPA and Moshir as discussed above. Accordingly, dependent Claim 2 is separately patentable over the cited references for at least these additional reasons.

Finally, there is no motivation to combine the cited references as suggested in the Office Action. The motivation provided on page 5 of the Office Action is a motivation based on "subjective belief and unknown authority", the type of motivation that was rejected by the Federal Circuit in *In re Sang-su Lee*. In other words, the Office Action does not point to any specific portion of the cited references that would motivate one of skill in the art to combine the cited references as suggested in the Office Action. It is clear that the Office Action gains its alleged impetus or suggestion to combine the cited references by hindsight reasoning informed by Applicants' disclosure, which, as noted above, is an inappropriate basis for combining references. The fact that the Office Action cited three references as teaching the recitations of a single claim further supports the fact that Applicants' disclosure was used as a road map for the combination. Furthermore, even if the AAPA and Moshir could be properly combined, the combination of the AAPA, Moshir and Hubinette would not teach the recitations of the claims of

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the present application for at least the reasons discussed above. Accordingly, dependent Claim 2 is separately patentable over the cited references for at least these additional reasons.

Dependent Claim 3 is separately patentable over the cited references for at least the reasons discussed above with respect to dependent Claim 2.

Dependent Claim 4 recites, in part, "queuing a distribution/installation request in a request queue and setting the distribution/installation request into an active queue when a pre-specified time is exceeded." The Office Action states that the recitations of dependent Claim 4 are taught by the AAPA. *See* office Action, page 6. As discussed above, the only mention of queues in the Background of the invention is an outbound package queue which stores an indication that the software package is scheduled for transmission and an inbound package queue that stores the packages received. Accordingly, nothing in the Background of the Invention discloses or suggests a queuing a distribution/installation request in a request queue and setting the distribution/installation request into an active queue when a pre-specified time is exceeded as recited in dependent Claim 4. Accordingly, dependent Claim 4 is separately patentable over the cited references for at least these additional reasons.

As discussed above, dependent Claims 6 and 7 are a data processing program and a computer program product, respectively, corresponding to the method of Claim 1. Accordingly, Claims 6 and 7 are separately patentable over the cited references for at least these additional reasons.

Official Notice

The Office Action takes Official Notice of the teachings of Claims 5 and 10. The Office Action admits that the AAPA, Moshir and Hubinette fail to disclose "detecting an active queue overload" as recited in dependent Claims 5 and 10. *See* Office Action, page 6. However, the Office Action states that these recitations are well known in the art and therefore it would have been obvious to modify the teachings of the cited references. *See* Office Action, page 7. Applicants agree that as generally stated in the Office Action, detecting a queue overload, may be known. However, Claim 5 recites, in part, "detecting an active queue overload and checking if a currently selected target data processing system is already active." Furthermore, Claim 10

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recites, in part, "means for checking if a pre-specified time is exceeded and means for checking if the active queue is overloaded and, if not, for setting the request into the active queue." The Examiner cannot take Official Notice that the specific recitations of Claim 5 and 10 are known because they are not. Accordingly, Applicants respectfully submit that Claims 5 and 10 are separately patentable over the cited references for at least these additional reasons.

The New Claims are Patentable

Applicants have added new Claims 12-13, 14-15, 16-17, 18-19 and 20, which correspond to Claims 4, 5, 6, 7 and 11. Thus, the new claims are patentable for at least the reasons discussed above with respect to Claims 4, 5, 6, 7 and 11.

CONCLUSION

Applicants respectfully submit that the pending claims are patentable over the cited references for at least the reasons discussed herein. Accordingly, Applicants respectfully submit that the pending claims are in condition for allowance, which is respectfully requested in due course.

Respectfully submitted,



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